IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11694 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJU ALIAS LAMBU GOKUL MAHAJAN

Versus

STATE OF GUJARAT

Appearance:

MR AR SHAIKH for the Petitioner.

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/02/2003

ORAL JUDGEMENT

The petitioner is a detenu, who is detained under the provisions of the Prevention of Anti-social Activities Act, 1985 ("PASA", for short) as a "dangerous person". Along with the detention order dated 31.5.2002,

he is served with the grounds of detention. In the said grounds, there is a reference about of two criminal cases dated 4.3.2002 and 5.3.2002. The particulars of the said cases are given at page 32. One case is filed for offences punishable under Sections 147, 148, 149, 337, and 188 of the IPC, read with Section 135 of the Bombay Police Act. The said case is registered as I Guna Register No.34 of 2002. The second case, viz., I Guna Register No.36 of 2002, is filed for offences punishable under Sections 147, 148, 149, 436, and 188 of IPC, read with Section 135 of Bombay Police Act. Therafter, the authorities have recorded the statements of two witnesses on the same day. Ultimately, the authority was satisfied that the petitioner is a "dangerous person" and he is required to be detained by way of preventive detention.

At the time of hearing of this petition, learned Advocate for the petitioner submitted that the aforesaid two cases are registered as back as in March, 2002 and the detention order is passed in May, 2002. It is, therefore, submitted that, there is a delay in passing the detention order from the date of the alleged incidents in question. It is required to be noted that the statements of witnesses were recorded on 3rd May, 2002 and 4th May, 2002, respectively, yet, the detention order was not passed forthwith. Even lastly, the detaining authority verified the statements, as per the say of the learned AGP, on 25.5.2002; still, there is a delay of about one week in passing the detention order. The object of preventive detention is to prevent a person immediately from indulging in such illegal activity. In Special Civil Application No.78 of 2002, decided on 16.3.2000, this Court has held that such delay in passing detention order will prove to be fatal so far as the detention order is concerned. In the said decision, this Court has held as under :-

> " ... ...
>
> 6.1 So far as delay in passing of the corder is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit-in-reply. In paragraph 11 of this affidavit-in-reply, the detaining authority states as under :-
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> " I say that it is true that

inspection of shop was carried on 11.8.1999 and order of detention is passed on 13.12.1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention.

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkar, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry / Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed.

... ..."

There is no proper explanation in the reply as to why immediately after verifying the statements, the detention order was not passed. This petition is, therefore, required to be allowed on the short ground of delay in passing the detention order from the date of the alleged incidents in question as also on the ground of delay in passing the order after recording the statements of witnesses.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered

that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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(apj)